IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5958 OF 2007

M/s.Shah Velji Karman & Co. ...Petitioners
Versus
M/s.Dattakripa Constructions & anr. ....Respondents

S.R.Shinde for the petitioners.
A.G. Bhaktwani for respondent no.1 and 2.

CORAM: S.C.DHARMADHIKARI, J.

7th December, 2007.

P.C. :

1. This is a Writ petition challenging an order passed by the Trial Court refusing the petitioner the permission to amend the plaint and recalling an earlier order passed in that behalf, at the instance of the respondents/defendants.

2. The petitioner is the original plaintiff who has filed a suit in the trial court being Suit no. 589 of 2003 against the respondents. The suit proceeded on the basis that the upper portion of the structure has been demolished whereas the petitioner is on the ground floor. The suit was filed on the apprehension that the ground floor structures are also likely to be

demolished and in that event, the petitioner would be rendered shelterless. Therefore, a declaration and permanent injunction is claimed to protect the rights in the structure. The suit is filed on 14.8.2003 and thereafter on account of subsequent developments leading to the demolition of the entire building/structure the petitioner applied for amendment. That amendment is sought to incorporate subsequent events and the request in furtherance thereto that the petitioner is entitled to equivalent structure in the new building which is likely to be erected and constructed on the said land and the defendants/respondents before me be directed to provide the same.

3. On this Application which was preferred ion 16.4.2004,the Trial Court issued notice and the respondents/defendants were duly served according to the petitioners, but they did not file any reply. Therefore,on 25.4.2005 the following order was passed.

> ". Heard. Say not filed. Plaintiff wants to incorporate subsequent events in the suit. Thereafter, to avoid further multiplicity of the suit, application is allowed. "

4. The respondents being aggrieved by this ex-parte order filed an application to recall the same on 10.6.2006 and prayed that the order allowing amendment be recalled. That sought participation at the stage at which amendment application was considered. They prayed for an opportunity to file a reply and oppose the same. That application has been allowed. The result is that the order granting amendment is recalled and the application will now be re-heard after more than two years.

5. When this matter was placed before me I called upon Ms.Bhaktwani, appearing for the original defendants/respondents to satisfy me as to how the original order permitting the amendment to the plaint and which amendment has already been carried out suffers from any serious infirmity requiring recalling of the same. She pointed out that under the garb of putting subsequent events on record, the petitioner has claimed further relief of he being put in possession of its equivalent area in the new structure. Such a

relief can only be claimed on the basis of a fresh cause of action. Admittedly, the demolition of the entire building and reconstruction on the said land is a fresh cause of action and therefore the amendment changes the nature of the earlier suit and should not be permitted.

6. When I enquired from her as to whether the petitioner can file a fresh suit on this cause of action or not, naturally she could not say anything in negative. Thus, a fresh suit could have been filed. One of the objects and purposes for allowing amendment is to avoid multiplicity of proceedings. Here, one suit between the same parties is pending in the Trial court. Admittedly there are subsequent developments, namely, the entire building is now demolished. In such circumstances, the petitioner has sought leave to incorporate these events in this suit and apply for appropriate reliefs based thereon. I see no prejudice to the respondents by such a course of action. Whatever pleas, they could have raised and claimed in the fresh suit are available for being raised and remain unaffected and untouched. In such

circumstances, the Learned Judge should not have recalled his order but instead heard the parties in the manner suggested above and should have gone to the root of the case and passed appropriate orders. When I see no prejudice to the respondents by the amendment being allowed, there is no warrant for recalling the order passed by the Trial court in that behalf. The Learned Judge should not have recalled his orders in the peculiar facts of this case. Having satisfied myself with regard to the pleas raised by the petitioner in the amended plaint in the peculiar facts of this case instead of remanding the matter back once again to consider the request for amendment, I proceed to quash and set aside the impugned order. The impugned order is accordingly quashed and set aside. Amendment is allowed by the Trial court and which order remains undisturbed and uninterferred with. The respondent to now file their additional Written Statement within a period of eight weeks from the date of the receipt of the amended plaint. The Trial court to thereafter proceed in accordance with law. All contentions on merits are kept open and no opinion is expressed thereon. Petition allowed in the above terms. No

costs.

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